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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,170	06/20/2003	Andy Peichl	7781.0083-00	7610
22852	7590	06/26/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER WONG, ERIC TAI WAI				
ART UNIT		PAPER NUMBER		
3693				
MAIL DATE		DELIVERY MODE		
06/26/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/601,170

Applicant(s)

PEICHL ET AL.

Examiner

ERIC T. WONG

Art Unit

3693

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

/ERIC T. WONG/
Examiner, Art Unit 3693

Applicant's arguments filed 6/6/2008 have been considered but are not persuasive.

In regards to the rejections of claims 1, 2, 4, 6-10 and 13-33 under 35 U.S.C. 103(a), Applicant argues that the proposed combination of Haines and Ross would not have been obvious to one of ordinary skill in the art at the time of invention because the modification would change the principle of operation of the prior art invention being modified. Examiner disagrees. Modifying the budgeting system of Haines to budget for human resources would not change its principle operation, as the system would still be allocating and monitoring a budget. The modification would merely be applying a known technique to a known method ready for improvement to yield predictable results with an expectation of success. Applicant further argues that one of ordinary skill in the art would have no reason to make the combination since a consumer would have no reason to monitor a human resource budget. A recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In regards to the rejection of claim 3 under 35 U.S.C. 103(a), Applicant argues that there would be no reason to combine the securing, integrating, and manipulating of employee payroll and human resource information of Williams into the budgeting system of Haines. Examiner disagrees. As discussed above, the combination of Haines and Ross would accomplish allocation and monitoring of a human resource budget. Williams teaches an error handling module to ensure correctness in formulating a payroll. It would have been obvious to combine the error handling module of Williams with the human resource budgeting system to ensure that portions of the budget spent are indeed correct, which, in turn, ensures that the remaining budget is also accurate.

In regards to the rejection of claim 5 under 35 U.S.C. 103(a), Applicant argues that the Official Notice fails to overcome the deficiencies of Haines in view of Ross because it only provides calculating an employee salary. Examiner reasserts that the Official Notice meets the limitation of claim 5, which merely recites "calculating an individual employee salary based on said retrieved human resource data."

In regards to the rejection of claims 11 and 12 under 35 U.S.C. 103(a), Applicant argues that there would be no reason to combine features of Thaler-Carter with the budgeting system of Haines. Examiner disagrees. Thaler-Carter discusses a model for defining a cost-per-hire for employee positions. This model would be useful for determining the costs of various positions in a human resource budget, allowing for the department to achieve increased budgeting accuracy.